IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

CRP.No. 2059 of 2000(C)

(TLB.782/1973 of TALUK LAND BOARD, HOSDRUG)

REVN. PETITIONER/CLAIM PETITIONER:

SHRI VADAKKEKARA KORAN,
S/O. KALLIYODAN KORAN,
AGED 63 YEARS, RESIDING AT KALLIYOT,
PERIKALAM, PERIYA VILLAGE,
HOSDURG VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS/LEGAL HEIRS OF STATEMENT GIVER:

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1. SMT. GOWRI, D/O. PULLIKODE KUNHAMBU NAIR

2. SHRI PURUSHOTHAMAN, S/O. -DO- -DO-

3. SHRI MUURALI, S/O. -DO- -DO-

4. SHRI PEETHAMBARAN, S/O. -DO-

5. SMT. SHOBHANA, D/O. -DO-

6. SMT. JAYASREE D/O. -DO-

(ALL RESIDING AT ERUMAPALLAM HOUSE,
POST KANHANRADUKKA, VIA. ANATHASRAM)

7. THE TAHSILDAR, HOSDURG, KASARAGOD.

8. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.S.V.BALAKRISHNA IYER
ADV. SRI.P.B.KRISHNAN
BY GOVERNMENT PLEADER ADV. SHRI DILEEP.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 2059 of 2000(C)

ORDER ON C.M.P.NO. 4207 OF 2000 IN C.R.P.NO. 2059 OF 2000

DISMISSED.

28.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 2059 OF 2000

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Dated this the 28th November, 2007

O R D E R

The petitioner, whose claim petition under section 85(8) of the Kerala Land Reforms Act was rejected by the Taluk Land Board as per its order dated 22nd July 2000, challenges the said order in this revision.

2. Kunhambu Nair, predecessor-in-interest of respondents 1 to 6 in the revision was the declarant in the ceiling case. As per order dated 18.12.1976, the Taluk Land Board directed the declarant to surrender an extent of 5.94 acres of land in RS.No. 396 of Periya village. It is stated by the Taluk Land Board that the said land was taken possession of, on 02.04.1997.

3. One Savithri Amma, filed a claim petition under section 85(8) of the Kerala Land Reforms Act, claiming right and title in respect of 3.38.25 acres of land in RS.No. 396 of Periya village. The Taluk Land Board rejected the claim petition as per order dated 27.03.1990. Aggrieved by that order, the claimant preferred C.R.P.No.1187 of 1990 which was disposed of on 27.09.1991. This Court set aside the order passed by the Taluk Land Board to take possession of 5.94 acres of land in RS.No. 396 of Periya village and to consider the application filed by Savithri Amma giving her an opportunity of being heard. It

was held by this Court that the share of Savithri Amma in RS.No.396 of Periya village should not be taken possession of.

4. After the disposal of C.R.P.No. 1187 of 1990, the Taluk Land Board passed an order dated 13.07.1993 evidently allowing the claim petition filed by Savithri and directed the declarant to surrender an extent of 66 cents of land. It is not known why the said extent of 66 cents could not be retained from out of 5.94 acres of land in RS.No. 396 of Periya village which was already taken possession of. It would appear that there was a direction to the Tahsildar to re-convey the aforesaid extent of land to the declarant and to take possession of 66 cents of land from another survey number, viz. RS.No.393 /1 of Periya village.

5. Alleging that 66 cents of land in RS.No.393/1 , which was attempted to be taken possession of, belonged to him, the revision petitioner , Vadakkekara Koran filed a claim petition under section 85(8) of the Land Reforms Act on 06.11.1997. The claim petitioner contended that he had obtained purchase certificate from the Land Tribunal for an extent of 4 acres of land in RS.No. 393 of Periya village as per the proceedings in S.M.No. 1084 of 1976. It was contended by the claim petitioner that his landlord is A.C. Omana Amma and that he is a cultivating tenant in respect of 4 acres of land. The Land Tribunal recognised his tenancy right by granting purchase certificate in his favour.

6. The claim petitioner had executed a gift deed in favour of his son,

Asokan. Asokan had filed a suit against the declarant for injunction as O.S. 53 of 1991 on the file of the court of the Munsiff, Hosdurg. That suit was dismissed and the appeal therefrom was also dismissed. It is not stated in the order as to what is the extent of land claimed by Asokan as per the gift deed. It is also seen from the order passed by the Taluk Land Board that the claim petitioner has filed O.S.No. 564 of 1997 against the legal representatives of the declarant claiming title of the property in survey No. 393/1 of Periya village . In that suit, the claim petitioner based his title to the lease granted by Omana Amma and in his evidence he relied on the purchase certificate issued in his favour. It is not stated anywhere in the order of the Taluk Land Board and the counsel for the petitioner and the learned Government Pleader are not in a position to say whether that suit was disposed of.

7. The Taluk Land Board narrated the facts in detail in the order . A contention was put forward by the declarant stating that the purchase certificate issued in favour of the claim petitioner Koran is vitiated by fraud and collusion. The Taluk Land Board has not decided that point at all. The Taluk Land Board proceeded on the basis that the purchase certificate issued in favour of the claim petitioner Koran is legal and valid. It would appear that no evidence was adduced on the declarant's side to establish that the purchase certificate issued in favour of the claim petitioner is vitiated by any of the vitiating circumstances. No such evidence or contention is seen discussed in the order

passed by the Taluk Land Board.

8. Normally these discussions would have resulted in accepting the contention put forward by the claim petitioner in respect of 66 cents of land in Survey No. 393/1 . If the claim petition is allowed , what would be done is to delete the said extent of 66 cents from the account of the declarant, in which case the declarant need not surrender any extent of land. What we find in the proceedings is, the declarant opposes the claim of the claim petitioner and contends that the said extent of 66 cents of land should be taken possession of. It cannot be lost sight of that civil litigations are pending between the parties and the total extent in dispute is not 66 cents of land alone but a larger extent. The contention of the declarant that this extent of 66 cents alone should be taken possession of, is to be viewed in that background.

9. The Taluk Land Board rejected the claim petition not on the basis that the claim petitioner failed to prove his title to 4 acres of land or that the purchase certificate is vitiated by fraud or collusion, but only on the ground that the claimant failed to prove that the extent of 66 cents in Survey No. 393/1, which is allegedly taken possession of by the Taluk Land Board, is part of the extent of 4 acres claimed by the claimant and is included in his purchase certificate. There is no such burden of proof on the claimant. When the claimant says that he has got title to 4 acres of land and contends that what is sought to be taken possession of as excess land includes the land over which

he has title, what is expected of the Taluk Land Board to decide is whether the claimant has title to the property and whether the property claimed by him forms part of the property which is sought to be taken possession of. The discussion in the order passed by the Taluk Land Board would indicate that the Taluk Land Board has recognised the purchase certificate issued by the Land Tribunal in favour of Koran, the claimant. The Taluk Land Board has erroneously cast the burden of proof on the claimant to establish not only his title to the property claimed by him but to prove that the extent which is sought to be taken possession of forms part of the property claimed by him.

10. Sub-section (2) of Section 105A of the Kerala Land Reforms Act provides that the Taluk Land Board may depute any officer appointed under sub-section (1) of Section 105A to make local enquiry, investigation or inspection and to collect any data and the report and the records submitted by such officer may be used without examining him as evidence in the proceedings before the Taluk Land Board. An authorised officer has to be deputed to find out whether the extent of 66 cents which is sought to be taken possession of forms part of the extent of 4 acres of land claimed by the claimant. It is not a difficult task. The claimant can be directed to identify and show the extent of 4 acres claimed by him as evidenced by purchase certificate. In a ceiling case, before taking possession of excess land, the Taluk Land Board has to determine the extent and identity of the land to be taken

possession of, as provided in Section 85(5) of the Kerala Land Reforms Act. The Taluk Land Board should be aware of the identity of the land which is sought to be taken possession of . In the case on hand, it is stated that the extent of 66 cents was taken possession of. Therefore, the said property can be located without any difficulty. If it is found that the said extent of 66 cents forms part of the extent of 4 acres claimed by the claimant, then necessarily on the basis of the findings rendered by the Taluk Land Board recognising the title of the claimant in respect of 4 acres, the said extent of 66 cents shall be deleted from the purview of the ceiling area. If such a decision is taken, the declarant is not affected because allowing the claim petition means deletion of that extent from the total extent of land from the account of the declarant. Therefore, I am of the view that the Taluk Land Board should depute an authorised officer to undertake this exercise to fix the identity of the land claimed by the claimant and to fix the identity of the extent of 66 cents which was allegedly taken possession of as excess land. The Taluk Land Board shall, thereafter, decide the claim petition on the basis of the data collected by the authorised officer and the evidence adduced by the claimant and also on the basis of such other materials produced by the claimant as well as the declarant. A final decision in such a way would finally dispose of the ceiling case and a quietus to the litigation before the Taluk Land Board can be achieved.

11. For the aforesaid reasons, the order passed by the Taluk Land

Board is set aside. The Taluk Land Board shall proceed on the basis that the claimant Koran has title to the extent of property covered by the purchase certificate in his favour. The Taluk Land Board shall, thereafter, decide whether the extent which was sought to be taken possession of as excess land or which was already taken possession of (66 cents) forms part of the extent of 4 acres claimed by the claimant . It is desirable that a proper plan is prepared with the help of survey officials so that an effective and final decision can be taken by the Taluk Land Board and the revisional court , if any such revision arises, can also decide the case effectively and finally.

The Civil Revision Petition is allowed as above. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 2059 OF 2000

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Dated this the 28th November, 2007

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